



**IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**



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Because College Changes Everything

August 24, 2016

The Honorable John King
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dr. Sophia McArdle
U.S. Department of Education
Transmitted via electronic posting to www.regulations.gov

Re: Docket ID ED-2016-OPE-0050

Dear Secretary King and Dr. McArdle:

The Iowa Attorney General and the Iowa College Student Aid Commission (Iowa College Aid) respectfully submit these joint comments on the Department of Education's proposed program integrity rule concerning state authorization and required disclosures for Title IV participating schools that offer distance education and correspondence courses.

Iowa College Aid is Iowa's postsecondary registration agency, providing regulation and oversight of postsecondary institutions doing business in the state. In addition to registration, Iowa College Aid administers a complaint handling process for Iowans attending in-state, and out-of-state institutions, as well as non-residents attending Iowa institutions. Iowa College Aid also partners with the Iowa Attorney General to administer certain provisions of the Iowa Consumer Fraud Act that provide consumer protections for Iowa postsecondary students. Lastly, Iowa College Aid is the state agency authorized to enter in to or recognize agreements that create interstate reciprocity in the regulation of postsecondary distance education.

The Iowa Attorney General is the primary enforcer of Iowa's consumer protection laws. As Attorney General, I have always made protecting consumers one of my highest priorities and while our office addresses a wide variety of consumer issues, the actions of several postsecondary education providers have brought distance education issues to the forefront of our concerns. Our office has conducted a number of Iowa-only investigations and legal actions against Iowa and out-of-state institutions. Additionally, we have participated and led several multi-state actions against distance education providers operating nation-wide.

These comments reflect our agencies' shared interest in protecting Iowans who seek to purchase educational services from institutions of higher education operating within Iowa, as well as those beyond our borders. We believe the Department's proposed rule is an excellent step toward stronger protections for students and applaud its efforts. We hope by providing the following comments, the Department can improve upon the existing language to ensure clear and robust provisions for students.

[§600.2]

We strongly support the Department's proposed rule language that does not permit a state authorization reciprocity agreement (SARA) to prohibit a participating state from enforcing its own consumer protection laws. Furthermore, we appreciate that the Department has left this language general enough to accommodate consumer protection laws in individual States.

Iowa College Aid and the Iowa Attorney General also note the Department's statement in the proposed rule preamble, on page 48601, as follows: "...we strongly believe that a State should be active in protecting its own students, and therefore such [reciprocity] agreements should not prohibit a participating State from enforcing its own consumer protection laws. Thus, any reciprocity agreement that would prohibit a participating State from enforcing its own consumer protection laws would not comply with our proposed definition of a State authorization reciprocity agreement, nor meet the requirements for State authorization under 34 CFR 600.9."

The conditions of state participation in the existing state reciprocity agreement administered by a non-state entity prohibited the State of Iowa from participating in SARA until Iowa changed its laws to exempt out-of-state, SARA-participating schools from providing postsecondary student consumer protections mandated by Iowa's consumer fraud laws. These laws prohibit unlawful advertising and selling of educational courses (IC §714.17), require schools to file evidence of financial responsibility (IC §714.18); implement an Iowa-specific refund policy and meet additional requirements for demonstrating compliance (IC §714.24). These laws were implemented to ensure a fair and transparent market for consumers seeking educational services. The preemption of these laws could cause significant harm to Iowa students.

The Iowa Attorney General and Iowa College Aid believe the Department upholds the State of Iowa's right to enforce the consumer protection laws identified above under a state authorization reciprocity agreement, including one administered by a non-State entity. Additionally, we interpret the Department's proposed rule preamble guidance to mean that any reciprocity agreement that prohibits the State of Iowa (or any other State) from enforcing consumer protection laws that protect its own students does not constitute compliant state authorization for a Title IV participating institution that offers distance education or correspondence courses.

Iowa College Aid and the Iowa Attorney General support excluding from proposed rule language a State authorization reciprocity agreement administered by a non-State entity. A state authorization reciprocity agreement, for the purpose of institutional, Title IV eligibility, should be under the control of the agreement's member States, regardless of whether a non-State entity "administers" the agreement.

We believe any state authorization reciprocity agreement that permits policy-making by representatives of institutions is fundamentally flawed due to internal conflicts of interest. In the case of a state authorization agreement administered by a third party, non-State entity, the Department's rules and guidance should require that the States who are party to the agreement are the principals of the agreement, and the third-party, non-State entity is only the agent acting on behalf of the State principals. The agent should not have a conflict of interest in carrying out the terms of the reciprocity agreement. The governing body and internal policy development processes of a reciprocity agreement in which a third-party, non-State entity acts as the States' agent must ensure that the member States have ultimate authority for determining institutional standards for participation, proactively and on an ongoing basis assessing institutional compliance with those standards, otherwise making policy, providing interpretive guidance to participating institution, or rendering decisions that uphold State's rights to enforce their laws in cases when institutions operate in a State in a manner that exceeds the agreement's limitations on institutional presence in a State.

Under the current state authorization reciprocity agreement administered by a non-State entity, the non-State entity is acting as the principal of the agreement. The non-State entity has ultimate authority for establishing and enforcing the conditions of State and institutional participation in the agreement, expecting States to carry out the non-State entity's directives.

Our offices ask the Department to clarify in final rules that any State authorization reciprocity agreement the Department authorizes for the purpose of institutional Title IV eligibility must be governed and controlled by member States under clearly defined policies and procedures that allow the member States to exercise ultimate authority for establishing, maintaining, and enforcing conditions of State and institutional participation in the agreement.

[§600.99(c)(1)(i)]

The Iowa Attorney General and Iowa College Aid agree with the Department that state authorization of distance education providers, for Title IV eligibility purposes, should be determined by each State according to any applicable law and rule maintained by that State. Each State may have different standards for regulating distance education courses and programs offered to the residents of that State. Allowing States to utilize their existing laws as the benchmark for Title IV state authorization purposes does not impose any additional administrative burden on the State or require the State to change its laws.

[§600.9(c)(1)(ii)]

In this matter, we request clarification regarding what entity the Department will rely upon to determine whether an institution covered by a state authorization reciprocity agreement is operating in a State outside of the limitations of that agreement. Will the Department affirm that the State in which an out-of-state institution is offering distance education remains the ultimate authority for determining whether an institution is operating lawfully in that State, regardless of whether a non-State entity administers the agreement?

[§600.9(c)(2)(ii)]

Iowa College Aid and the Iowa Attorney General request the Department further clarify in final rule language that any State authorization reciprocity agreement the Department authorizes for

the purpose of institutional Title IV eligibility must not impose restrictions or conditions on a student's access to a State agency in the student's state of residence, for the purpose of filing a formal complaint against a distance education provider.

The current state authorization reciprocity agreement administered by a non-State entity prohibits States from formally accepting and taking primary responsibility for the complaint of a resident student who attends an out-of-state institution's distance education program, until the resident student first exhausts their institution's grievance process, and then exhausts the complaint process in the State in which the institution is located.

Our offices do not believe that students should be required to exhaust an institutional grievance process before filing a formal complaint with their home State. Complaints Iowa College Aid has received from students who attend institutions with large online populations indicate that too often, such students have difficulty obtaining consistent, authoritative, timely, or focused responses to their concerns from institutional staff. In such instances, students need the ability to escalate their concerns to their home State. In recent years, the Iowa Attorney General's Office has fielded a number of education-related consumer complaints against both in-state and out-of-state institutions. The receipt of these complaints is essential to ensuring the Attorney General's Office is aware of violations of Iowa consumer protection laws and can take action to protect residents of our state.

We believe that students attending programs offered by out-of-state distance education providers are best served by the State in which the student resides (e.g., the State authorizing agency; the State Attorney General's Office; the student's elected representatives in a State; and if applicable, a State licensing board) and that any State authorization reciprocity agreement that seeks to have States to abdicate their responsibility for enforcing the laws of their state and protecting their residents should be revised .

[§600.(c)(2)(ii); §668.50(b)(2) and (3)]

Our offices note two inconsistencies in this language. The first of these issues is that §600.(c)(2)(ii) appears to require an institution to document that there is a State process for review and appropriate action on complaints through a state authorization reciprocity agreement. Alternately, §668.50(b)(2)(ii) appears to require an institution to disclose a complaint process through a state authorization reciprocity agreement contingent on whether "that agreement establishes a complaint process..." Iowa College Aid and the Iowa Attorney General encourage the Department to expect that a state authorization reciprocity agreement establish a complaint process, and to require an institution to document and disclose that process. We ask that the Department make its expectations on this matter clear in the final rules.

Secondly, §600.(c)(2)(ii) appears to require an institution that offers postsecondary education through distance education under a State authorization reciprocity agreement to document that there is a process for review and action on student complaints through the State authorization reciprocity agreement. We presume that the intent of the proposed rule requiring the documentation of the process is so the institution can disclose the process to students.

§668.50(b)(2)(ii) and (b)(3) appear to require an institution that offers postsecondary education through distance education under a State authorization reciprocity agreement to disclose to students the process for submitting complaints established in the reciprocity agreement AND, separately under (b)(3), to disclose the process and contact information for submitting consumer complaints in each State in which the program's enrolled students reside.

We request the Department to clarify the final rules to ensure that the latter approach is required, as we believe it is in the best interests of students. This approach is also consistent with the Department's long-standing policy that an institution must make sure the student has access to contact information for the State in which the student resides for the purpose of filing complaints.

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/sa.html>.

[§668.50(b)(7) and §668.50(c)]

For the purpose of these comments, we will call a program that is offered solely via distance education, with the exception of internships and practicums, a "fully at-a-distance" program.

We strongly support the concept of the Department's proposal to require an institution that offers a fully at-a-distance professional licensure program to disclose whether the program does or does not satisfy a State's educational prerequisites for licensure. Iowa College Aid's experience with authorizing out-of-state schools who offer such programs suggests that the Department is likely to receive a significant volume of comments from institutions who assert that they should not be held responsible for making that determination. We urge the Department to be unyielding in response to such comments.

The Iowa Attorney General's Office and Iowa College Aid have fielded complaints from a large number of consumers in recent years that have experienced significant disappointment and financial hardship after completing distance education programs they believed would lead to professional licensure only to find that, in reality, their program did not qualify them for licensure. While attorneys general can and do seek legal remedies for consumers harmed by these practices, they are limited to refunds and prevention of future bad acts. Proper disclosures provided to students at the time of their enrollment can go a long way toward preventing the waste of students' time and federal student aid dollars. We applaud the Department for ensuring that the proposed rule eliminates the opportunity for students to be misinformed about their professional licensure opportunities.

We also support the Department's intent that the disclosures should apply to all institutional sectors: public, private nonprofit, and for-profit. In our experience, the lack of meaningful disclosures about a fully at-a-distance, professional licensure program is present in all institutional sectors. We believe institutions should know whether their program meets a State's educational prerequisites for licensure and share this knowledge with all prospective students. Institutions employ educated and experienced academic leaders who are capable of making comparisons between a program's curriculum or, if applicable, accreditation, and the educational prerequisites of a State professional licensing board. Sharing this information with prospective students is the best way to ensure students are making informed decisions. We believe

disclosures regarding professional licensure should be made by all sectors to all prospective students, unless an institution has closed its enrollment to the residents of that specific State.

We believe the proposed rule language describing an institution's responsibilities to disclose information about the educational prerequisites for a fully at-a-distance professional licensure or certification program is missing protection for prospective students in States in which the institution has no enrollees, but to whom the institution continues to market its fully at-a-distance professional licensure program(s). We ask that the proposed language be revised to ensure all students to whom an institution offers its professional licensure or certification program – regardless of whether the institution has currently enrolled students in that program – receive adequate disclosures.

Specifically, we ask the Department to modify §668.50(b)(7)(i) to require an institution that offers a fully at-a-distance program that prepares a student for professional licensure or certification to provide public disclosures about the educational prerequisites for licensure or certification to the residents of each State in which it offers the program, regardless of whether the institution has students from that State enrolled in its program.

We also ask that the Department modify §668.50(b)(7)(ii) to require an institution to publicly disclose whether the program does or does not satisfy the applicable education prerequisites for professional licensure or certification to the residents of each State in which it offers the program, regardless of whether the institution has students from that State enrolled in its program. And finally we ask the Department to strike proposed §668.50(b)(7)(iii), and to make coordinating changes in §668.50(c) to require an institution to make direct and individual disclosures prior to enrollment to prospective students who reside in each State in which the institution offers its fully at-a-distance professional licensure or certification program about its determination that the program does not meet that State's licensure or certification prerequisites, regardless of whether the institution has students from that State enrolled in the program and require an institution to make direct and individual disclosures prior to enrollment to prospective students who reside in each State in which the institution offers its fully at-a-distance professional licensure or certification program – regardless of whether the institution has students from that State enrolled in the program – about its determination that the program ceases to meet that State's licensure or certification prerequisites within 7 days of making that determination.

We support the Department's proposal to require institutions to make the same public and direct/individual disclosures to currently enrolled students.

The Iowa Attorney General and Iowa College Aid applaud the Department for these detailed and impactful proposed rules and thank them for considering our comments as they develop final

rules on these important topics. We value the ability to combine state and federal talents and knowledge to achieve the best solution for protecting students.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom Miller". The signature is written in a cursive, slightly stylized font.

Thomas J. Miller
Attorney General of Iowa

A handwritten signature in black ink that reads "Karen Misjak". The signature is written in a cursive, slightly stylized font.

Karen Misjak
Executive Director, Iowa College Aid